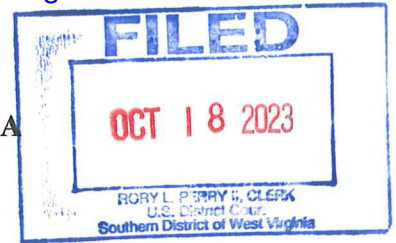


IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
CHARLESTON DIVISION



JOHN ANTHONY CASTRO,  
**Plaintiff,**

vs.

SECRETARY OF STATE  
ANDREW WARNER, and  
DONALD JOHN TRUMP,  
**Defendants.**

WEST VIRGINIA REPUBLICAN PARTY,  
**Intervenor.**

2:23-cv-00598

PRO SE AMICUS CURIAE

Reply to

STATE OF WEST VIRGINIA'S MOTION TO DISMISS

PRO SE IS AN ELIGIBLE VOTER A NATURAL BORN CITIZEN OF THE UNITED STATES AND CURRENTLY A RESIDENT OF THE STATE OF WEST VIRGINIA.

As such PRO SE has the 9<sup>th</sup> right of choice to exercise the 1<sup>st</sup> right to redress.

PRO SE hereby exercises both to aid and help the court in this matter.

STATE OF WEST VIRGINIA'S MOTION TO DISMISS page 1

"At the outset, the Court lacks jurisdiction to consider them."

This is error in the least at most gross incompetence willful neglect acting under color of office.

[5. There are no accessories to the crime of treason; but all the particeps criminis are principals. All persons present, aiding, assisting, or abetting any treasonable act, or who are present, countenancing, and are ready to afford assistance, if necessary, to those committing a treasonable act, are principals.] Case of Fries Justice Chase April 29, 1800

Art 3 Section 2. The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States,

The Office of the President and the election laws of such arise "under this Constitution, the laws of the United States," further fraud statutes may apply "obtaining money under false pretenses" re: campaign donations.

"And Castro's claims present a non-justiciable political question, going to the core political matter of whether a person may serve as President of the United States"

SAME: An error in the least at most gross incompetence willful neglect acting under color of office.

It is a CONSTITUTIONAL MATTER " of whether a person may serve as President of the United States" Art 2 Citizenship, Age, Residence, Sec 3 of the 14th 22nd Amendment ALL ARE CONSTITUTIONAL MATTERS not only for Art 3 Courts; but also per Art 6 clause 3 "and all executive and judicial officers, both of the United States and of the several states, shall be bound by oath or affirmation, to support this Constitution;" Which **Intervenor** PATRICK MORRISEY ATTORNEY GENERAL and **Defendant** SECRETARY OF STATE ANDREW WARNER are of the W.V. State Executive Officers. THE COURT will note "Chief" is not written therein " and all executive".

STATE OF WEST VIRGINIA'S MEMORANDUM OF LAW IN SUPPORT OF ITS MOTION TO DISMISS page 1

"For another, Castro's claims are not ripe, as his West Virginia candidacy remains speculative."

If a person ineligible for the office of president, obtains money for such office; that is fraud and possibly ongoing criminal action. So not only should this question be looked into by Civil suits, a criminal investigation may also be warranted and AG Morrisey has a duty to protect the people(and their money) of W.V. from scammers and frauds.

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**"President Trump is not an "officer" subject to disqualification under the Fourteenth"**

**Officer.** 1. A man employed by the publick, 2. A commander in the Army.

**1792 Dictionary of the English Language**

Art 2 Sect. 4. puts *"The President, Vice President and all civil officers of the United States,"* on EQUAL FOOTING regarding removal

*"shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors"* and Art 1 Sect 3 keeps them the same in conviction thereof

*"Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust or profit under the United States: but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment and punishment, according to law."*

It is absurd, ridiculous, and down right propaganda that the writers of the 14<sup>th</sup> did not mean the President was not an Officer.

*"Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any state, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any state legislature, or as an executive or judicial officer of any state,"*

herein the word Officer we have an echo of the 9<sup>th</sup> amendment *"The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."*

The enumeration of certain elective offices shall not be construed to deny of disparage other offices whether they be elected nominated appointed or confirmed

**And all this assumes that Section 3 of the Fourteenth Amendment is self-executing.**

**NO ASSUMPTION NEEDED** the only thing Congress can do under Sec 3 is a vote *"remove such disability."*

*"But Congress may by a vote of two-thirds of each House, remove such disability."*

**ARGUMENT page 4** The Court should dismiss Castro's complaint for lack of jurisdiction. He lacks standing to bring his constitutional claim, as he has not specifically established how he has been injured,

It is self evident by Castro's suit and the motions by Defendant Warner and Intervenor Morrissey; that the Executive Officers of the State of W.V. AND OTHER STATES have not upheld their Art 6 Clause 3 oath of office. Instead of defending the Constitution they are acting and writing like private Attorneys for Donald Trump or the Republican Party

So important was this Oath it was written in U.S. Statues at Large Volume 1 Statue 1 Chapter 1 **FIRST CONGRESS**

*Conflicts of interest*

*Intervenor Morrissey*

*On April 4, 2023, Morrissey announced his candidacy for governor of West Virginia in the 2024 election 2020 presidential election intervention*

*On December 8, 2020, Texas Attorney General Ken Paxton sued the states of Georgia, Michigan, Wisconsin, and Pennsylvania, where certified results showed Joe Biden the electoral victor over President Donald Trump.*

*Morrissey joined Paxton's lawsuit seeking to overturn the results of the presidential election by challenging election processes in four states where Trump lost. He had repeated an abundance of false, disproven and unsupported allegations regarding mail-in ballots and voting in those four battlegrounds. The news came after West Virginia's Governor Jim Justice, who had yet to congratulate Biden for winning the presidency, said Trump called him to discuss the lawsuit. He said he encouraged Morrissey to join the Texan's attempt. "I'm sure our attorney general will make the right move," said Justice, a strong Trump supporter.*

*Morrissey filed a lawsuit, along with 11 other states, challenging the EPA's proposal to regulate coal-fired power plants*

*Art 1 sec 10 No state shall, without the consent of Congress, lay any duty of tonnage, keep troops, or ships of war in time of peace, enter into any agreement or compact with another state such lawsuit would constitute an "agreement or compact" requiring said "consent of Congress"*

*Defendant Warner*

*He declared candidacy for the Republican primary scheduled on May 14, 2024*

*After Donald Trump lost the 2020 election and made false claims of fraud, Warner defended Trump's claims and participated in "Stop the STEAL" protests.*

*Defendant Trump Jan 6 2021 "Our country has had enough. We will not take it anymore and that's what this is all about. And to use a favorite term that all of you people really came up with: We will stop the STEAL."*

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JLW

*Joint Statement from Elections Infrastructure Government Coordinating Council and Sector Coordinating Council Executive Committees*

**For Immediate Release**

November 12, 2020 WASHINGTON, DC –

"The November 3rd election was the most secure in American history. Right now, across the country, election officials are reviewing and double checking the entire election process prior to finalizing the result.

When states have close elections, many will recount ballots. All of the states with close results in the 2020 presidential race have paper records of each vote, allowing the ability to go back and count each ballot if necessary. This is an added benefit for security and resilience. This process allows for the identification and correction of any mistakes or errors. **There is no evidence that any voting system deleted or lost votes, changed votes, or was in any way compromised.**

<https://www.nased.org/news/jointstatement111220>

**Lastly, this case presents a quintessential political question: whether a candidate should stand for office or be disqualified for actions taken while he was previously in office.**

Once again not a political question. Art 2 & Art6 cl 3 oath of office and the COMMAND

"he shall take Care that the Laws be faithfully executed," are Constitutional questions within this courts jurisdiction HOGG'S WEST VIRGINIA CODE ANNOTATED SUPPLAMENT 1918

Meaning of word "shall" -- Generally the word "shall" when used in constitutions leaves no way open for the substitution of discretion, Baer v. Gore (W.Va.) 90 S.E. 530

Supreme Court of Appeals of West Virginia. BAER v. GORE. No. 3257. Oct. 24, 1916.

*Syllabus by the Court.*

A statute, which provides that a voter on entering the polling place "shall announce his name," "shall sign his name and place of residence in a book of the party whose ballot he wishes to cast," and subscribe an oath verifying his party affiliation, etc., before receiving and voting the ballot of the party so named, is **mandatory, and prerequisite to the exercise of the elective franchise in a nominating primary.**

**Primary elections are so far matters of public concern that, within legislative discretion, when not restrained by any constitutional inhibition, they are proper subjects of reasonable statutory regulation under the police power of the state. Such regulations are vital to the accomplishment of the purpose and scheme of nominating elections.**

Statutes providing for such elections are based on a recognition of political parties as governmental agencies, and are usually intended to maintain party organizations **and to secure the integrity of party nominations.**

The appellate jurisdiction of this court is not determined by the value of the subject-matter of the controversy in cases "involving the constitutionality of a law."

**Where a just determination of a controversy between opposing candidates, arising out of a canvass of primary election returns, appealed to the circuit court under section 26a22, c. 3, Barnes' Code, virtually depends on the proper interpretation of a law charged to be invalid as in violation of the Constitution, this court has jurisdiction to review the proceeding on writ of error.**

The State is holding the voter to a higher standard than Intervenor Morrissey is holding Defendant Trump

Castro cannot state a federal constitutional claim merely because he disagrees with how President Trump comported himself in the days around January 6, 2021.

*Intervenor Morrissey cannot state a federal motion merely because he agrees with how President Trump comported himself in the days around January 6, 2021.*

First, a plaintiff must show an "injury in fact that is both concrete and particularized and actual or imminent, not conjectural or hypothetical

Second, a plaintiff's claimed injury must be "fairly traceable to the challenged action of the defendant"—that is, "there must be a causal connection between the injury and the conduct complained of."

And third, "it must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision."

Id

1 injuries

TRUMP, DONALD J. /data/candidate/P80001571 Candidate for President REPUBLICAN PARTY ID: P80001571 DONALD J. TRUMP FOR PRESIDENT 2024, INC. /data/committee/C00828541 Principal campaign committee Presidential ID: C00828541

2 fairly traceable

Art 6 cl 3 oath state executive officers

3 favorable decision

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defendant Trump is ineligible per sec 3 of the 14<sup>th</sup> and Justice Chase's ruling in the Case of Fries

"Enemies" are those with whom the United States is at least actively at war. (enemies under the Treason Clause are "subjects of a foreign power in a state of open hostility").

A pure example of gross incompetence or willful neglect on the part of Intervenor Morrissey

TREASON AGAINST UNITED STATES DEFINED—INSURRECTION TO RESIST EXECUTION OF A LAW—INTENT—NUMBERS ENGAGED—PRINCIPAL AND ACCESSORY.

[1. An insurrection or rising of any body of the people to resist, or to prevent by force or violence, the execution of any statute of the United States for levying or collecting taxes, duties, imposts, or excises, or for calling forth the militia to execute the laws of the Union, or for any other object of a general nature or national concern, under any pretence, as that the statute is unjust, burthensome, oppressive, or unconstitutional, is "levying war" against the United States within the contemplation and construction of the constitution.]

[5. There are no accessories to the crime of treason; but all the particeps criminis are principals. All persons present, aiding, assisting, or abetting any treasonable act, or who are present, countenancing, and are ready to afford assistance, if necessary, to those committing a treasonable act, are principals.]

[6. If a man joins and acts with an assembly of people, his intent is always to be considered and adjudged to be the same as theirs; and the law judges of the intent by the fact.]

Any pretence includes "the big lie" by Defendant Trump that the election "was STOLLEN" ready to afford assistance includes willful neglect dereliction of duty filing motions on behalf of an Constitutionally ineligible person.

Sec 3 is no different than citizenship, age, residence or number of terms previously served

#### *Defendant Trump*

*Dec 19th 2020 - 1:42:42 AM EST*

Peter Navarro releases 36-page report alleging election fraud 'more than sufficient' to swing victory to Trump <https://t.co/D8KrMHnFdK>. A great report by Peter. **Statistically impossible to have lost the 2020 Election.** Big protest in D.C. on January 6th. Be there, will be wild!

*Dec 30th 2020 - 2:38:44 PM EST*

The United States had more votes than it had people voting, by a lot. This travesty cannot be allowed to stand. It was a Rigged Election, one not even fit for third world countries!

*Defendant Trump Jan 6 2021 "Our country has had enough. We will not take it anymore and that's what this is all about. And to use a favorite term that all of you people really came up with: **We will stop the STEAL.**"*

Suppose a judge(**president**) should countenance, or aid insurgents in a meditated conspiracy or insurrection against the government. This is not a judicial(**presidential**) act; and yet it ought certainly to be impeachable. He may be called upon to try(**pardon**) the very persons, whom he has aided.<sup>174</sup> Suppose a judge or other officer to receive a bribe not connected with his judicial(**presidential**) office; could he be entitled to any public confidence? Would not these reasons for his removal be just as strong, as if it were a case of an official bribe?(**emphasis PRO SE**)

174. Blount's Trial 39, 40, (Phila. 1799;) Id. 80.

175. Blount's Trial, 46 to 49; Id. 62, 64 to 68, (Philadelphia, 1799.) -- William Blount was expelled from the senate a few day before this impeachment, (being then a member,) and on that occasion he was, by a resolution of the senate, declared to be "guilty of a high misdemeanor entirely inconsistent with his public trust and duty, as a Senator. **The offence charged was not defined by any statute of the United States.** It was for an attempt to seduce an United States' Indian interpreter from his duty, **and to alienate the affections and confidence of the Indians from the public officers residing among them,** etc. Journ. of Senate, 8th July. 1797; Sergeant on Const. Law, ch. 28, p. 286, 287.

Story, Joseph. Commentaries on the Constitution of the United States

*Only Defendant Trump and his sycophants acted or believed there was a **STEAL** and many continue this day without regret or remorse for their aiding and abetting.*

*Joseph L. Westfall 10-15-23*  
Joseph L. Westfall PRO SE (H.S. Diploma)

*4/4  
JLW*